



PLANNING DEPARTMENT SHORELINE SETBACK APPLICATION

FOR OFFICIAL USE ONLY:	
SSD 201__ - __	
Acceptance Date:	
Website Posting Date:	
Determination Date:	
Planning Commission Date:	
Expiration Date:	
Planner Assigned:	

Instructions: File all information requested under Part A for processing the Determination of Applicability (§8-27.1), including signature page. Fill out Parts A and B if you know, due to proximity of the shoreline, that your parcel will require a Certified Shoreline Survey. If you are proposing a permitted structure or subdivision within the shoreline setback area fill in Part C. For applications involving a variance, complete Part D.

Applicant Information	
Applicant: _____	
Mailing Address: _____	Phone: _____
_____	Email: _____
Applicant's Status: (Check one)	
<input type="checkbox"/> Owner of the Property	(Holder of at least 75% of the equitable and legal title)
<input type="checkbox"/> Lessee of the Property	Lessee must have an unexpired and recorded lease of five (5) years or more from the date of filing of this application. If not, Owner(s) must provide a Letter of Authorization.
<input type="checkbox"/> Authorized Agent	Attach Letter of Authorization
Transmittal Date: _____	

Project Information (attach additional sheets, if necessary)	
County Zoning District: _____	Tax Map Key(s): _____
	Land Area: _____
Nature of Development: (Description of proposed structure or subdivision)	

**NO PERMITS WILL BE ISSUED WITHOUT PLANNING COMMISSION ACCEPTANCE,
EXCEPT AS PROVIDED IN §8-27.8(c)(8)**

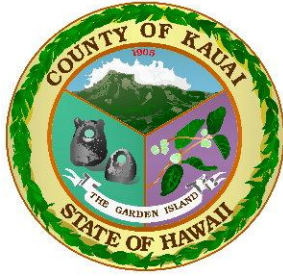
Part A

Shoreline Setback Determination of Applicability (§8-27.1)

Check all that apply, fill in applicable information. Any box checked must be accompanied by additional information, photos and/or documentation.

- ☐ Properties Abutting the Shoreline
☐ Project's approximate distance from shoreline: _____
- ☐ Properties Not Abutting the Shoreline
☐ Project's approximate distance from shoreline: _____
- ☐ Additional Information:
☐ Closest distance of improvement(s) from Shoreline is approximately _____ ft.
☐ Number of parcels and type of improvements (roads, buildings, structures) between Shoreline and this parcel:

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- ☐ Topography (undulating, flat, slope, etc.) and ground elevation of subject parcel (Lowest and Highest elevations)

- ☐ Shoreline type (e.g. beach, dune, rocky, sandy with rocky outcropping, etc.)

- ☐ Artificially armored Shoreline

☐ If checked, what type of armoring (e.g. seawall, revetment, bulkhead): _____

☐ Is the armoring permitted/authorized? _____

☐ Date of authorization (attach copy of authorization letter): _____

- ☐ Is property in coastal floodplain (if checked, what zone)? _____

- ☐ Has this property been subject to coastal hazards in the past? (If checked, please describe)

If the proposed structure or subdivision is within the shoreline setback area then, please be aware that if the determination of a structure is approved, the Applicant shall agree in writing that the Applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazards and coastal erosion, pursuant to §8-27.7(b)(2).

The requirements of the Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure under §8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit. §8-27.7(b)(6).

Applicant's Signature

Signature _____

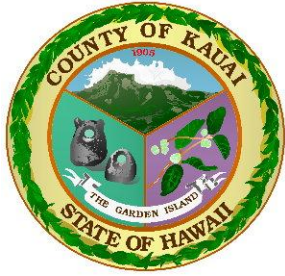
Date _____

Applicability (to be completed by Planning Department)

- ☐ **Setback Determination necessary.** Requirements of Ordinance No. 979 are applicable.

Planning Director or designee

Date



PLANNING DEPARTMENT SHORELINE SETBACK DETERMINATION

If **Part A** has been deemed that a Determination will be necessary, the additional information will be required for submission of this application.

Part B

Exemption Determination

- ☐ A non-refundable processing fee of **one hundred dollars (\$100.00)** shall accompany a request for determination. (§8-27.8(e))
- ☐ **Exemption 1**
In cases where the proposed structure or subdivision satisfies the following four criteria:
(A) In cases where the proposed structure or subdivision is located outside of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) 'V' or 'VE' flood zones;
(B) The proposed structure or subdivision is located at an elevation which is thirty (30) feet above sea level or greater;
(C) The applicant can demonstrate to the satisfaction of the Planning Director that the property is clearly adjacent to a rocky shoreline and that it will not affect or be affected by coastal erosion or hazards; and
(D) The shoreline setback shall be sixty (60) feet from the certified shoreline which has been established not more than twelve (12) months from the date of the application for the exception under this section.
- ☐ **Exemption 2**
In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between shoreline and applicant's property, elevation, and the history of coastal hazards in the area.
- ☐ **Exemption 3**
Those structures and uses found exempt in Table 3 (§8-27.7) (see pg. 5-6)
- ☐ Letter from the Department of Public Works stating that the proposed project does not constitute "Substantial Improvement," pursuant to §8-27.2

Exemption Determination (to be completed by Planning Department)

Pursuant to §8-27.3 the Kaua'i County Code, 1987 as amended, the Planning Department hereby certifies the proposed structure(s) or subdivision(s) as exempt from those shoreline setback determination requirements established under §8-27.8.

Planning Director or designee

Date



PLANNING DEPARTMENT SHORELINE SETBACK DETERMINATION

Part C

Shoreline Setback Determination (§8-27.8)

(This document is the request for a shoreline setback structure or subdivision determination form.)

Please complete this section if you are proposing a structure or subdivision within the Shoreline Setback Area that requires a certified shoreline, a determination of applicability (**Part A & B**) from the Planning Director shall first be obtained.

Certified Shoreline	
<input type="checkbox"/>	Certified Shoreline
<input type="checkbox"/>	Survey Map (showing Certified Shoreline, Shoreline Setback, and Structure(s) OR Subdivision)
<input type="checkbox"/>	Average Lot Depth: _____
<input type="checkbox"/>	Setback (Table 1 or Table 2): _____
<input type="checkbox"/>	Affidavit: Statement of inability to certify shoreline, pursuant to §8-27.3(d)

Planning Director or its designee	Date

Public Projects less than \$125,000	
<input type="checkbox"/>	Public Projects less than \$125,000 Declaration ((§8-27.8(c)(2))

Planning Director or designee	Date
<input type="checkbox"/>	Certified Shoreline Required
<input type="checkbox"/>	Certified Shoreline Not Required

Describe proposed structure(s), including but not limited to landscaping plan:

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Written text addressing the above proposed structure addressing the compliance with §8-27.8(c)(2):

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PLANNING DEPARTMENT SHORELINE SETBACK VARIANCE

Part D

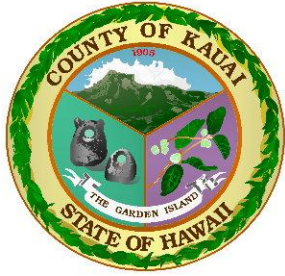
Shoreline Setback Variance (§8-27.9)

This part is the request for a shoreline setback variance. In addition to the documentation and information requested in Parts A, B, and C, the Applicant applying for a variance is required to submit all required information, per §8-27.9 listed in the checklist below.

- ☐ A non-refundable administrative fee of three hundred dollars **(\$300.00)**.
- ☐ Certification from the owner or lessee of the lot which authorizes the application for variance;
- ☐ An environmental assessment and or EIS, if required, prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai‘i;
- ☐ The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed structure or subdivision and/or landscaping is to be located; or operation is to occur (attach information);
- ☐ A site plan of the shoreline setback area, drawn to scale, showing:
 - ☐ Existing natural and man-made features and conditions within;
 - ☐ Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
 - ☐ The certified shoreline and the shoreline setback line (submitted under **Part B**);
 - ☐ Contours at a minimum interval of two (2) feet unless waived by the Director; and
 - ☐ Proposed development and improvements showing new conditions with a typical section (if a structure).
- ☐ A copy of the certified shoreline survey map of the property (submitted under **Part B**);
- ☐ Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance (attach written statement);
- ☐ Analysis and report of coastal erosion rates and coastal processes; and
- ☐ Any other information required by the Director (please list).

Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under §8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation and the grantor shall be subject to the penalties set forth in this Article 3.

For any structure approved within the shoreline setback area by variance, the Applicant shall agree in writing that the Applicant, its successors and permitted assigns shall defend, indemnify and hold the County of Kaua‘i harmless from and against any and all loss, liability claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.



PLANNING DEPARTMENT SHORELINE SETBACK INFORMATION

Table 1. (This table is included for illustrative purposes only.)

Lots Included in the Kaua'i Coastal Erosion Study. The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet.

LOTS INCLUDED IN KAUA'I COASTAL EROSION STUDY

Average Lot Depth	Setback Line
Less than 140 feet (<140 feet)	40 feet plus (70 X annual coastal erosion rate) plus 20 feet
140 feet to 220 feet (140-220 feet)	<p style="text-align: center;"><u>Greater of:</u></p> <p>40 feet plus (70 X annual coastal erosion rate) plus 20 feet</p> <p style="text-align: center;"><u>-or-</u></p> <p>(Average Lot Depth minus 100 feet) ÷ by 2 plus 40</p>
Greater than 220 feet (>220 feet)	<p style="text-align: center;"><u>Greater of:</u></p> <p>40 feet plus (70 X annual coastal erosion rate) plus 20 feet</p> <p style="text-align: center;"><u>-or-</u></p> <p>100 feet from the certified shoreline</p>

View erosion rate maps from the County website at

<http://www.soest.hawaii.edu/coasts/kauaicounty/KCounty.html>

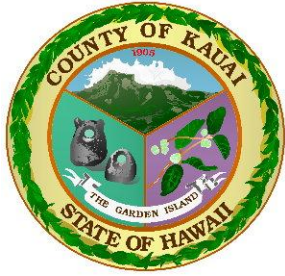
Table 2. (This table is included for illustrative purposes only.)

Lots Not Included in the Kaua'i Coastal Erosion Study.

LOTS NOT INCLUDED IN KAUA'I COASTAL EROSION STUDY

Setback Calculation	
(Average Lot Depth – 100/2+40) Subject to the Following:	
1	For lots with naturally <i>occurring rocky shorelines</i> , the shoreline setback line shall be <u>no less than 40 feet.</u>
2	For all other lots, the shoreline setback line shall be <u>no less than 60 feet.</u>
3	For all lots, the <u>maximum</u> setback that can be required <u>shall be 100 feet.</u>

Non-Abutting Lots. If an Applicant is unable to secure permission from the abutting landowner to complete a certified shoreline for a non-abutting lot within approximately five hundred fifty (550) feet of the shoreline, the Planning Director may, pursuant to §8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.



PLANNING DEPARTMENT SHORELINE SETBACK INFORMATION

Table 3. This table is presented for Exemption 3 (§8-27.7).

Permitted Structures within the shoreline setback area	
(a)	The following structures are permitted in the shoreline setback area. All structures and/or landscaping not specifically permitted in the section are prohibited without a variance.
(1)	Existing conforming and nonconforming structures/activities
(2)	Structure or activity that received a shoreline variance or administrative approval prior to February 26, 2008.
(3)	A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing on the shoreline setback area on June 16, 1989.
(4)	“Temporary structures” as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.
(5)	A structure that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.
(6)	Repairs to a lawfully existing structure, including nonconforming structures, provided that: <ul style="list-style-type: none"> (A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes; (B) The repairs do not constitute a substantial improvement of the structure; and (C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law.
(7)	Beach nourishment or dune restoration projects approved by all applicable governmental agencies.
(8)	A structure approved by the Director as a minor structure.
(9)	Qualified demolition of existing structures.
(10)	Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.
(11)	Scientific studies and surveys, including archaeological surveys.
(12)	Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawai‘i, the Mayor of the County of Kaua‘i or any other public official authorized by the law to declare an emergency.
(13)	Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within thirty (30) days following the completion of the film production.
(14)	Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawai‘i Revised Statutes.



PLANNING DEPARTMENT SHORELINE SETBACK INFORMATION

(b)	The following conditions shall apply to any new structure permitted in the shoreline setback area:
(1)	All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.
(2)	The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.
(3)	The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than forty feet (40') from the shoreline.
(4)	Unless otherwise provided, all new structures and/or landscaping shall not: <ul style="list-style-type: none"> (A) adversely affect beach processes, (B) artificially fix the shoreline, (C) interfere with public access or public views to and along the shoreline, (D) impede the natural processes and/or movement of the shoreline and/or sand dunes, or (E) alter the grade of the shoreline setback area.
(5)	All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along to the shoreline.
(6)	The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.